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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1948.

No. 278 Misc.

MARY GIBBONS,

vs.

HUGO E. BRANDT and RUTH E.
BRANDT,

Petitioner,

Respondents.

On Petition for Writ
of Certiorari to the
United States Cir-
cuit Court of Ap-
peals for the Seventh
Circuit.

RESPONSE TO PETITION FOR REHEARING.

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*To the Honorable, the Chief Justice and Associate Jus-
tices of the Supreme Court of the United States:*

It is submitted that the Petition for Rehearing should be denied because it fails to comply with Rule 33, paragraph 2, of the rules of this Court, in that:

1. Said petition fails to state any intervening circumstances of substantial or controlling effect;
2. Said petition fails to state any substantial grounds not previously presented;
and,
3. Said petition is not supported by a certificate of counsel to the effect that it is presented in good faith and not for delay, nor does counsel certify that said petition is restricted to the grounds specified by the aforesaid Rule 33, paragraph 2.

I.

The Petition for Rehearing fails to state any intervening circumstances of substantial or controlling effect.

The Petition for Writ of *Certiorari* at pages 6 to 10, both inclusive, 13, 14, 16, 19 to 24, both inclusive, and 27, 28 and 29 argues that the Circuit Court of Appeals for the Seventh Circuit failed to apply properly the law of Illinois, sometimes urging that said Circuit Court of Appeals refused to follow the controlling Illinois authorities and sometimes urging merely that said Court failed to apply said authorities correctly. No additional point of law is urged in the Petition for Rehearing.

With one exception, each of the authorities cited in the Petition for Rehearing was cited in the Petition for Writ of *Certiorari*.

Freeman on Judgments, Fifth Edition, 1925, was cited at page 31 of the Petition for Writ of *Certiorari*.

People v. Sterling, 357 Ill. 354, was cited at pages 22 and 24 of the Petition for Writ of *Certiorari*; and,

U. S. v. Throckmorton, 98 U. S. 61, was cited at page 31 of the Petition for Writ of *Certiorari*.

Ocean Insurance Co. v. Fields, 18 Fed. Cases 532 (Case No. 10,406) is cited in the Petition for Rehearing, but was not cited in the Petition for Writ of *Certiorari*. The citation, without more, shows that the case is no intervening circumstance. It was decided at an October 1841 term of court.

II.

Said Petition for Rehearing fails to state any substantial grounds not previously presented.

The Petition for Rehearing contains no statement of any matter not previously presented in the Petition for Writ of *Certiorari*, nor any intimation of such a matter except by references to the "associated interests" of the "Appellees". Nothing is shown as to who or what are the "associated interests" of the "Appellees". In fact there is nothing about the judgment and opinion of the Circuit Court of Appeals in the instant case which would be of interest to any person not directly and immediately affected by said judgment any more than is usual with any opinion of said Court applying established principles of Illinois law.

Petitioner's suggestion, at pages 4 and 5 of the Petition for Rehearing, of a procedure by which owners of tavern premises may "harass injured people until they die of legal exhaustion, and thereby completely evade the obvious intent and purpose of the Illinois Dram Shop Act", is unsound, and is therefore not a substantial ground. It would be a most extraordinary case in which an owner of tavern premises could think it prudent to forego an opportunity to contest, on the merits, a claim comparable to that of the petitioner, assuming he had such an opportunity, and to rely for defense, not on his own conduct of a defense on the merits of the claim, but on his ability to establish that an adjudication in favor of the claimant, obtained in a trial in which he did not participate, was obtained by fraud or collusion. Moreover, any person having a claim such as the petitioner's may compel the owner of the tavern property to defend on the merits; and need not leave said owner with no defense except that the judgment procured against the

tavern operator, was procured by fraud or collusion. An owner of tavern premises, either alone or with the tavern operator, can be made a party defendant in a suit brought under Article VI, Section 14, of the Illinois Liquor Control Act; and any judgment recovered against the owner of the tavern premises in such a proceeding would be binding upon the tavern premises at least as soon and as completely as is the situation in a case like the instant one where the tavern operator, alone, is sued under Section 14, aforesaid, and thereafter a suit is brought under Section 15, of Article VI aforesaid, against the owner of the tavern premises, alone. (Laws of Illinois—58th General Assembly—First, Second and Third Special Sessions of 1933-1934, pp. 72 and 73, Ill. Rev. Stat. 1947, Ch. 43 §§135 and 136.) If the owner of tavern premises is a non-resident of Illinois, or cannot be personally served with process, the tavern property, or any other property which he may own, can be subjected to suit under Section 14, aforesaid, by attachment proceedings (Ill. Rev. Stat. 1947, Ch. 11).

In any event, the aforesaid suggestion urged at pages 4 and 5 of the Petition for Rehearing amounts to nothing more than was urged upon this Court at pages 29 and 30 of the Petition for Writ of *Certiorari*.

III.

Said Petition for Rehearing is not supported by a certificate of counsel to the effect that it is presented in good faith and not for delay, nor does counsel certify that said petition is restricted to the grounds specified by Rule 33, paragraph 2, of the rules of this Court.

A copy of the Petition for Rehearing, as served upon counsel for respondents, was not accompanied by any certificate of counsel whatsoever. Inquiries made at the office of the Clerk of this Court, on the 23rd day of February, 1949, indicate that no such certificate has been filed. Apparently there has been no compliance with Rule 33, paragraph 2, of the rules of this Court.

Respectfully submitted,

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